

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<b>IN RE</b>	§	
	§	
<b>LUCKY W. LUMMUS,</b>	§	<b>Case No. 99-41676-BJH-7</b>
	§	
<b>Debtor.</b>	§	
_____	§	
	§	
<b>DIANE G. REED, TRUSTEE,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>Adversary No. 99-4198</b>
	§	
<b>LUCKY W. LUMMUS and,</b>	§	
<b>TERESA M. LUMMUS,</b>	§	
	§	
<b>Defendants.</b>	§	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Findings of Fact

1. Before the Court are Plaintiff's Motion for Summary Judgment and Brief in Support ("Plaintiff's Motion") and Defendants' Response to Plaintiff's Motion for Summary Judgment and Brief in Support and Cross-Motion and Brief in Support of Summary Judgment ("Defendants' Motion").

2. The Court adopts the parties' Stipulation of Uncontested Facts (the "Stipulation") as if such factual findings were set forth herein. The Court makes the additional findings set forth herein.

3. Lucky W. Lummus (the "Debtor") filed for relief under chapter 7 of the Bankruptcy Code on March 31, 1999. *See* Stipulation, ¶ 2. On April 10, 1999, the Debtor and his non-debtor spouse ("Mrs. Lummus") filed a joint 1998 Form 1040 U.S. Individual Tax Return (the "Joint Return"). *See* Stipulation, ¶ 4. The Joint Return shows, *inter alia*:

a. Joint total 1998 earnings of \$58,059.00, consisting of (1) Mrs. Lummus' wages of \$49,164.00, (2) the Debtor's business income \$7,839.00, and (3) other income (e.g., other interest income) of \$1,056.00. *See* Stipulation, ¶¶ 5-8.

b. Joint total withholding and estimated tax payments of \$20,712.00, consisting of (1) Mrs. Lummus' withholding of \$9,792.00, and (2) the Debtor's estimated tax payments of \$10,920.00. *See* Stipulation, ¶¶ 5-6.

c. Joint total 1998 income taxes owed of \$5,534.00, resulting in a joint total overpayment of 1998 income taxes of \$15,178.00. *See* Stipulation, ¶¶ 4, 9.

4. The Debtor and Mrs. Lummus sought to apply \$2,040.00 of the overpayment to their estimated 1999 tax liability, and requested the remaining \$13,138.00 of overpayment as a tax refund (the "Refund"). The Internal Revenue Service issued a refund check for \$13,138.00 payable to the Debtor and Mrs. Lummus. Counsel for the Debtor and Mrs. Lummas has possession of the Refund. *See* Stipulation, ¶¶ 4-10.

5. Because Mrs. Lummus did not file for relief under the Bankruptcy Code, there is a question as to the portion of the Refund to which she and the Debtor's estate, respectively, is entitled.

6. Any Finding of Fact may also be deemed a Conclusion of Law.

#### Conclusions of Law

1. The Court has jurisdiction over this dispute pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding over which the Court may enter a final judgment. 28 U.S.C. § 157.

2. The parties agree that this Court should enter a summary judgment where, as here, it appears from the record that there is no genuine issue of material fact and that the moving party

is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c); *Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 533 (5<sup>th</sup> Cir. 1996).

3. A debtor's bankruptcy estate includes "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is [under] the sole, equal, or joint management and control of the debtor." *See* 11 U.S.C § 541(a)(2). In *Ragan v. Commissioner of the Internal Revenue Service*, 135 F.3d 329 (5<sup>th</sup> Cir. 1998), *cert denied*, 525 U.S. 875 (1998), the court explained that while personal earnings are community property, they are subject to the sole management and control of the spouse that earned them. *See Ragan*, 135 F.3d at 333 (citing TEX. FAM. CODE § 3.102(a) (West Supp. 1998).) The *Ragan* court further concluded that "to the extent that the income is attributable to one spouse's sole management community property, the refund from the excess tax on that income is the sole management community property of that spouse." *See id.* ("[T]he case law overwhelmingly establishes that overpayments by married couples are apportionable to each spouse to the extent that he or she contributed to the overpaid amount.") (citation omitted)); *see also In re Bathrick*, 1 B.R. 428, 430 (Bankr. S.D. Tex 1979) ("The source of an overpayment of income tax determines the character of the refund, with a refund of excess withholding tax merely being a repayment of earnings from employment") (superseded by statute on other grounds as stated in *Thomas v. Burke (In re Burke)*, 150 B.R. 660, 662-63 (Bankr. E.D. Tex.1993)). Because the tax overpayment, and therefore the refund, derived solely from the debtor's earnings (*see Ragan*, 135 F.3d at 331), the *Ragan* court found that the debtor's spouse was not entitled to any portion of the refund. *See id.* Thus, in Texas, a debtor's bankruptcy estate includes the debtor's interest in a tax refund resulting from a jointly filed tax return. *See id.*; 11 U.S.C § 541(a)(2).

4. Here, while Mrs. Lummus contributed the majority of the joint earnings, she did not contribute the majority of the tax overpayment. The Court concludes that the Debtor's estate is entitled to that portion of the Refund as calculated below:

a. The Lummas' joint total earnings in 1998 were \$58,059.00. Mrs. Lummus contributed \$49,164.00, or 84.68%, of those earnings, while the Debtor contributed \$8,895.00,<sup>1</sup> or 15.32%, of those earnings.

b. The Lummas' tax liability for 1998 was \$5,534.00. As Mrs. Lummus' earnings accounted for 84.68% of the total earnings, she was responsible for 84.68% of the total taxes owed for 1998, or approximately \$4,686.00, while the Debtor was responsible for the remaining 15.32% of the taxes owed, or approximately \$848.00.

c. As a result, Mrs. Lummus contributed \$5,106.00 to the tax overpayment (*i.e.*, \$9,792.00 in withholding minus her 84.68% share of taxes owed of \$4,686.00) and the Debtor contributed \$10,072.00 to the tax overpayment (*i.e.*, \$10,920.00 in estimated tax payments minus his 15.32% share of taxes owed of \$848.00).

5. Accordingly, and in accordance with 11 U.S.C. § 541(a) and the Fifth Circuit's decision in *Ragan*, the Debtor's estate is entitled to \$10,072.00 of the Refund, or the amount the Debtor contributed to the tax overpayment, and Mrs. Lummus is entitled to the remaining \$3,066.00.

6. The Trustee is entitled to a summary judgment directing the turnover of \$10,072.00 of the Refund to her. A separate judgment will be entered consistent with these findings and conclusions.

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<sup>1</sup>The Debtor earned \$7,839.00 of income from his self-employment. The Tax Return shows \$1,056.00 of miscellaneous income which the parties attribute to the Debtor for purposes of the summary judgment motions. *See* Plaintiff's Motion p. 6, n.2; Defendants' Motion p. 5.

7. Any Conclusion of Law may also be deemed a Finding of Fact.

Signed this \_\_\_\_ day of November, 2000.

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**Barbara J. Houser**  
**United States Bankruptcy Judge**